

REMARKS

This amendment is responsive to the Official Action mailed January 11, 2005, following an Examiner Interview on March 10, 2005, and is accompanied by a Petition for Extension and the required fee as well as Exhibits AA, BB and CC. Claims 1-10 are pending. No new matter is added.

The substance of the Interview included a discussion of applicants declaration to swear behind the cited reference of Kou (US Pat. No. 6,363,365). In the official action, the sufficiency of the declaration was challenged, or at least its Exhibit H. At the interview it was discussed that Exhibits E or F alone were sufficient to establish that the subject matter of priority U.S. Prov. Pat. App. No. 60/121,347, filed February 24, 1999, pre-dated the Kou reference's filing date.

Again, applicants' priority application was filed less than three months after Kou. The priority application contained about 125 pages of source code of a computer-implemented embodiment of the invention. Comments in the source code show dated debugging activities occurring both on August 8, 1998 (Exhibit E, which predates Kou's filing date by about four months) and then again on September 2, 1998 (Exhibit F, which predates Kou's filing date by three months).

Exhibit E shows the code was revised to allow applicants to send email bills to the customers not serially one-by-one but by a broadcast list. Exhibit F shows the code was revised to handle the problem of when a vendor revised its bid with submission of a whole new bid. Evidently, when the buyer commanded the program to open the bids, the buyer was either (i) not being served the correct bid or else (ii) being served two bids from the same vendor and thereafter being mixed up over what was what. The examiner asked the undersigned why the parties wouldn't recognize that the latest bid in time was the correct bid. The undersigned reply that not only is the level of computer literacy low in some cases but also, as natural, give people two of anything when there should only be one and confusion will occur.

Nevertheless, Exhibits E and F are sufficient to show that the program as a whole was indeed not only authored but being run for real purposes because these revisions are refinements which would only be discovered after some initial period of experience.

The rest of the exhibits were submitted to support the fact that Exhibits E and F were likely to be true for the dates they state. That is, if applicants had launched a commercial enterprise exploiting that program, then a reasonable person would expect the sort of things that the rest of the exhibits show. The exhibits as a whole are arranged chronologically. The earlier exhibits are more in the nature of internal memos that show the beginnings of a project that would result in the authoring of the program. The later exhibits show that applicants were seeking opportunities to publicize and sell their program and services.

Hence Exhibit H is sufficient to show not that applicants did attend that seminar but that applicants were seeking seminars like that after the program was reasonably proven and debugged in order to showcase and sell their program and services. Taken as a whole, the declaration and its exhibits are sufficient to swear behind Kou.

Accordingly, the declaration removes Kou as an available reference.

The substance of the Interview further included a discussion that the invention claimed by Kou and invention as defined in these claims do not overlap.

In Kou's enterprise, security is paramount. In applicants', security is lax.

A physical demonstration was made of Kou's electronic process. The physical counterpart of Kou has the buyer receiving a locked suitcase which contains a locked briefcase which contains the bids. Hence it takes two keys to access the bids, one to the outer suitcase and the other to the inner briefcase. The buyer is never in possession of both keys until the opening date. It was speculated that the reasons behind such paramount security might be that the bids contain national secrets. Or also, for large government contracts where one region of the United States is going to see a huge economic benefit to the detriment of other regions in the U.S., the bid process will have to be transacted with a very high standard of fairness or else there will be criminal and/or political consequences.

Regardless why, with Kou, security is paramount. With applicants' enterprise, security is lax. The undersigned described in particular the purchasing environment for school districts. School districts are relatively poor, nevertheless they buy a lot of things and at a lot of different times, being required to do so by sealed bid competitions. Hence the school districts are continually on a weekly if not daily basis launching a sealed bid competition. And for all their

effort, school districts really aren't getting the best prices. Applicants's priority nonprovisional application describes the case of copy paper bought on a fixed price for an annual term. Since the cost of copy paper can fluctuate a lot over a year, vendors high ball the school districts in their bids. Hence school districts could really do better just buying on the open market without a sealed bid and annual term basis.

Also, certain merchants do not like to participate in sealed bids. One example is Wal-Mart®. The Wal-Mart® attitude is mixed, but at times it has been "*We already offer the lowest prices in town. You want low prices, drive over and pick up your stuff like everybody else* ." Again, so it seems, and applicants did describe this in their priority nonprovisional application.

Accordingly, with applicants' enterprise, security is lax. The buyers can open the bids whenever they want and in violation of their self-imposed deadline. Evidently school-district purchasers want this flexibility because they want no more restraint on themselves than they enjoyed in the paperworld.

However, in contrast to the paperworld, the claims as amended include an active logging process to log bid openings.

The Interview concluded with no agreement on the allowability of claim 1 in view of, among other things, passive logging activity. As will be more particularly described below, the claims have been amended in contrast to recite an active logging process.

Applicant appreciates the attention the examiner gave to the foregoing matters at the Interview.

Reconsideration of claims 1-10 *as amended* is respectfully requested. Claim 1 recites a data storage device and a computer-implemented process for writing data to the storage device in a form which is substantially un-editable by the requester. The requester is provided with a computer-implemented opening process to open the "response" communications without computer-implemented interference thereto. It is an aspect of the invention to provide a computer-implemented log process that operates automatically with the computer-implemented opening process in to write data comprising a log record to the storage device in the form that is substantially un-editable by the requester automatically with the requester's use of the computer-implemented opening process.

That way, requester's activity with opening at least the substantive content of the "response" communications is logged so that such log record can be audited after-the-fact to disclose if the requester voluntarily restrained itself from opening at least the substantive content of the "response" communications until the lapse of the some time determined from the deadline.

No new matter is added. The disclosure as filed -- as well as the disclosure of the priority U.S. Prov. Pat. App. No. 60/121,347, filed February 24, 1999 and U.S. Pat. App. No. 09/511,431, filed February 23, 2000 -- provides full support for claim.

Among many other places to find support, the present disclosure recites:

4. Bid Opening...When the buyer is ready to "unseal" the responses, he clicks on a button titled "unseal documents" which then makes the documents viewable. The locked indicator should then change to reflect that the documents have been unsealed (ie., a green opened padlock icon). Also, the date/time of the unseal event should be logged as an auditable event and shown next to unsealed documents....

5. Reporting. The views as stated above should satisfy any reporting requirements. To recap, the buyer needs to be able to view/print a list of who responded, the date/time each bid was received, and the date/time the bids were unsealed.

Specification, page 24, lines 3-11. Moreover:

A variation of method no. IV. can be reckoned from case no. 3 in FIGURE 1b. As a bid response 144 is being released from the service 105 to the buyer 102, the service might tag the communication 144 or include a script with the communication such that when the buyer executes such a command as 'decompress' or 'decode,' the tag or script executes. The tag or script can encrypt a message with a public key that includes the time and date the bid response 144 was opened. The service 105 can afterwards retrieve the encrypted message and decrypt it to provide some evidence of the buyer's faithfulness or not of waiting until after the deadline to open the bid 144. The buyer must beware, that if the encrypted messages are molested or deleted, then the service 105 cannot refute anyone's allegations that the buyer abused its obligations with respect to leaving the bid responses 144 unmolested until after the deadline.

Specification, page 36, lines 14-24.

The present disclosure also provides ample disclosure of (substantially) un-editable fields, for instance:

...The program 100' provides the buyer with removing the locking of the un-editable fields. That way, whereas the buyer 102 is "locked" out from editing or amending the spreadsheet results 144", the buyer 102 is ultimately empowered to unlock the spreadsheet 144" but only for extracting data for the major purpose of creating a computer-implemented form of purchase order 146 or message 138a.

Specification, page 21, lines 11-16. This language appears verbatim in the priority U.S. Pat. App. No. 09/511,431, filed February 23, 2000 (ie., on page 30, in lines 21-28). How the priority provisional application relates to this will be described below.

Exhibit AA shows a demonstration of an actual bid audit table in accordance with the invention (a real example would contain prohibited confidential data). A buyer can view (but not amend) its audit log for all its bid transactions as displayed in a single table. The line fourth from the top recites a message "*Bid closed early by Bionwave... Reason: All invited Suppliers have responded.*" The line second from bottom recites a message "*Bid request unsealed by Bionwave.*"

It is an aspect of the invention that the bid audit history is to be reported in a report suitable for publication. Exhibit BB shows another demonstration of how this actually practiced according to the invention. The Bid Audit History of a single bid is extracted from the larger table of Exhibited AA and cast in the form of the report that is Exhibit BB, which is accessible by the vendors with passwords over the Internet.

The foregoing practice existed even in the program represented by the source code contained in U.S. Prov. Pat. App. No. 60/121,347, filed February 24, 1999, as brief reference thereto will disclose.

Page 60 thereof, line 221, recites:

"uses ... BDE ..."

This can be interpreted as meaning, '*this program utilizes Borland Database Engine.'*

By way of background, there are two versions of Borland Database Engine ("BDE"), one being an administrator's or author's version, the other being a client version. Applicants sold their customers their program along with the client version of the BDE. In essence, the program made all the calls the client-version of BDE, and not the customer users. Hence the customers could not amend or edit their data in their Borland data tables unless (i) they had authoring software (which applicants did not provide them) and (ii) a password. Accordingly, the data in the customers' Borland data tables were substantially un-editable in the same sense that any data is un-editable in the software world. Experts aside, this is security which is not easily cracked.

Among other reasons for making the data un-editable included preserving the data's integrity. If a vendor bid \$100, the buyer was locked out not from extracting the data and inserting it into a Purchase Order as \$100, but amending it to (eg.) \$90. This is meant to protect buyers from mistakes when transferring numbers. And in any event, all tools for extracting the data were provided to the customers by the program itself. The programs made the calls to BDE. The customers were not enabled by applicants to do so. It is believed that no customer ever made any attempt to directly access the data through an authoring program because applicants are frequently called on to repair corrupted data. Applicants were never aware of any time a client tried to do repair itself with its own authoring tools.

Hence applicants had the authoring tools. At the original time the program was authored, applicants authored a database table structure for the Bid Information. Exhibit CC shows the Bid Information database table structure for the program from the year 1998.

Reference to Exhibit CC shows that the field third from the bottom is named "*Sealed*," which if true means that the document is a sealed document. The fields that are ninth and eighth from the bottom are named "*CanOpen*" and "*IsRead*," respectively, which if true mean that the response can be opened or that the document has been opened.

Now to return to the source code contained in U.S. Prov. Pat. App. No. 60/121,347, filed February 24, 1999, it recites on page 83, lines 1537 through 1549 (to paraphrase in part:

*[If user is requesting to open a bid-response which is sealed and can be opened, then]
begin
 Data.BidInfoTable.Edit;
 Data.BidInfoTable.FieldName('IsRead').asBoolean:=True;
 Data.BidInfoTable.Post;
[and start Windows to display the opened bid response, and so on].*

The three lines of code can be paraphrased as follows:

- (i) go to edit mode,
- (ii) edit the table to set “*IsRead*” (presumptively from false, the default) to true, and
- (iii) save edits.

The program did not provide the customer-user with any ability to edit “*IsRead*.” To do so would require authoring tools and a password. Hence the “ *IsRead*” data was written automatically (actually, by the immediately preceding computer process) with the bid response being opened and displayed to the customer opening the bid response.

The date for when “*IsRead*” was set to true was established in various ways. One practice involves researching the nightly network back-ups to show that at least the night before the scheduled opening the bid response(s) were as yet not read. An alternative practice involved the customer-user performing a manual back-up or save of the data prior to opening the bid responses in order to preserve an integrity record. Eventually the program evolved to where the “*IsRead*” functionality was enhanced to include a saved time stamp.

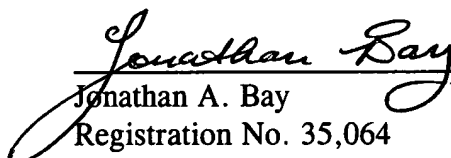
Claim 1 is allowable because the prior art lacks the processes of the invention as claimed, and fails to disclose or suggest any processes comparable to that claimed, performing similar functions and providing the advantages of the invention disclosed and claimed only by applicant. Allowance is appropriate and is hereby respectfully requested.

Claims 2-10 depend from claim 1 and are allowable for the same reasons set forth above. Claims 2-10 recite further aspects of the invention and each, when given separate consideration *as a whole*, it is patentable in its own right.

Every effort has been made to particularly and distinctly define the subject matter of the invention. The claims are definite, and are patentable over the prior art of record. The differences between the invention and the prior art are such that the subject matter claimed as a whole would not have been known or obvious to a person of ordinary skill in the art. Reconsideration, and allowance of all the pending claims, are respectfully requested.

Respectfully submitted,

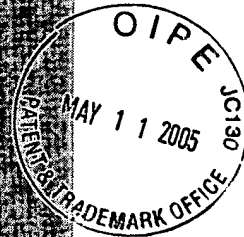
Date: 5-11-05


Jonathan A. Bay
Registration No. 35,064
Attorney at Law
333 Park Central East, Suite 314
Springfield, MO 65806
(417) 873-9100

Docket No. 401-8

BidID	AuditLineID	BidLineID	AuditTypeID	EntryType	CreationDate	Message	AuditType
1	1	0	0	DRFT	1/3/2005 2:43:06 PM	Bid Request created by BIONWAVE.	HEAD
1	2	0	0	PUBL	1/3/2005 2:48:28 PM	Bid Request published by BIONWAVE.	HEAD
1	3	0	0	OPEN	1/3/2005 2:48:36 PM	Bid Request issued by the system.	HEAD
1	4	0	0	UNSL	1/4/2005 2:55:10 PM	Bid closed early by BIONWAVE. Reason: All Invited Suppliers have responded.	HEAD
1	5	0	0	AWAR	1/4/2005 2:55:30 PM	Bid request awarded by BIONWAVE.	HEAD
2	1	0	0	DRFT	1/3/2005 2:49:28 PM	Bid Request created by BIONWAVE.	HEAD
2	2	0	0	PUBL	1/3/2005 2:50:28 PM	Bid Request published by BIONWAVE.	HEAD
2	3	0	0	OPEN	1/3/2005 2:50:37 PM	Bid Request issued by the system.	HEAD
2	4	0	0	UNSL	1/4/2005 12:00:01 PM	Bid request closed by the system.	HEAD
2	5	0	0	AWAR	2/16/2005 11:14:24 AM	Bid request awarded by BIONWAVE.	HEAD
3	1	0	0	DRFT	1/3/2005 3:22:56 PM	Bid Request created by BROPE.	HEAD
3	2	0	0	PUBL	1/3/2005 3:52:33 PM	Bid Request published by BROPE.	HEAD
3	3	0	0	OPEN	1/3/2005 3:52:39 PM	Bid Request issued by the system.	HEAD
3	4	0	0	UNSL	1/18/2005 12:00:01 PM	Bid request closed by the system.	HEAD
4	1	0	0	DRFT	1/3/2005 3:38:49 PM	Bid Request created by BROPE.	HEAD
4	2	0	0	PUBL	1/3/2005 3:52:42 PM	Bid Request published by BROPE.	HEAD
4	3	0	0	OPEN	1/3/2005 3:52:49 PM	Bid Request issued by the system.	HEAD
4	4	0	0	CLOS	1/4/2005 12:00:01 PM	Bid request closed by the system.	HEAD
5	1	0	0	DRFT	1/3/2005 3:47:11 PM	Bid Request created by BROPE.	HEAD
5	2	0	0	PUBL	1/3/2005 3:52:42 PM	Bid Request published by BROPE.	HEAD
5	3	0	0	OPEN	1/3/2005 3:52:49 PM	Bid request issued by the system.	HEAD
5	4	0	0	UNSL	1/13/2005 12:00:02 PM	Bid request closed by the system.	HEAD
7	1	0	0	DRFT	1/4/2005 2:21:21 PM	Bid Request created by BIONWAVE.	HEAD
7	2	0	0	PUBL	1/4/2005 2:42:49 PM	Bid request published by BIONWAVE.	HEAD
7	3	0	0	OPEN	1/4/2005 2:42:52 PM	Bid request issued by the system.	HEAD
7	4	0	0	CLOS	1/4/2005 3:00:02 PM	Bid request closed by the system.	HEAD
7	5	0	0	UNSL	1/4/2005 3:49:15 PM	Bid request unsealed by BIONWAVE.	HEAD
7	6	0	0	AWAR	1/4/2005 3:55:08 PM	Bid request awarded by BIONWAVE.	HEAD
8	1	0	0	DRFT	1/4/2005 3:21:55 PM	Bid Request created by BIONWAVE.	HEAD
8	2	0	0	PUBL	1/4/2005 3:40:20 PM	Bid request published by BIONWAVE.	HEAD
8	3	0	0	OPEN	1/4/2005 3:40:24 PM	Bid request issued by the system.	HEAD
8	4	0	0	CLOS	1/28/2005 2:00:01 PM	Bid request closed by the system.	HEAD
8	5	0	0	UNSL	2/16/2005 4:17:40 PM	Bid request unsealed by BIONWAVE.	HEAD
8	6	0	0	AWAR	3/4/2005 4:20:35 PM	Bid request awarded by BIONWAVE.	HEAD

EXHIBIT. AA.





Home Bids Auctions Suppliers Admin
Draft Issued Closed Awarded Cancelled Templates

Bid Audit History

[Return](#)

Date	Line	Description
5/1/2005 7:40:33 PM CST		Header Bid request unsealed by BIONWAVE.
4/29/2005 12:00:02 PM CST		Header Bid request closed by the system.
3/16/2005 8:26:30 AM CST		Header Bid request issued by the system.
3/16/2005 8:26:26 AM CST		Header Bid request published by BIONWAVE.
3/16/2005 8:17:07 AM CST		Header Bid Request created by BIONWAVE.

Items 1-5 shown of 5

1

Addendum Audit History

[Return](#)

No Audit History

*EXHIBIT. BB.*

BidInfo Database

Information pertaining to the following documents: RFQ, Bid, Bid Response, PO Award, & PO

Field Name	Field Type	Field Size	RFQ	Bid	FFBid	BidResp	FFResp	POAward	PO	SpreadOut	SpreadIn	InvoiceOut	InvoiceIn	MessageOut	MessageIn
* ID	Auto Num		Unique key generated by program												
UserID	A	8	Buyer's User ID		Seller's User ID		Buyer's User ID		Seller's User ID		Origin's User ID				
RecordType	A	20	Corresponds to column heading												
DocNumber	A	20	Buyer's original number for this document												
Template	Logical		Template document												
Reference	A	255	Attachment list		RFQ number		File location		PO number		Attachment list				
OriginDate	Date		Date of original document (RFQ, FF, PO)				N/A		Invoice date		Message date				
DateDue	Date		Date response is due		Date merchandise due		N/A		Date payment due		N/A				
TimeDue	Time		Time response is due				N/A								
ShipTo	A	255	Buyer's ship to address												
BillTo	A	255	Buyer's bill to address												
FreightMethod	A	20	N/A		Seller's freight method		N/A		Seller's freight charges		N/A				
FreightCharges	N/A				Seller's freight charges		N/A		Seller's freight charges		N/A				
PaymentTerms	A	20	N/A		Seller's payment terms		N/A		Seller's payment terms		N/A				
CanDeliverBy	A	20	N/A		Date seller can deliver merchandise by		N/A		N/A						
SentBy	A	20	Name of buyer that created this document												
RespondedBy	A	20	Name of seller that completed the bid document												
Status	A	1	Document status (New, Pending, or Sent)												
InstructionLine	A	100	*Please enter the lowest price at which you agree to furnish ...*												
Terms	F Memo		Actual terms sent with this document		N/A		Actual terms		N/A		Subject				
SendTo	A	20	Single or Group Recip.		N/A		Recipient		N/A		Recipient		N/A		
SendToArea	A	1	Local, Reg. or Nat				N/A		N/A		N/A				
Folder	A	255	Archive folder name												
CanOpen	Logical		N/A		Can resp be opened?		N/A								
IsRead	Logical		Has this document been read?												
IsSent	Logical		Has this document been sent?												
ServerDate	A	255	Server date and time that message was sent or received												
Message	F Memo		N/A		Message		N/A		Message		N/A		Message		
ReturnMessage	F Memo		N/A		Message		N/A		Message		N/A				
Sealed	Logical		Is this a sealed document?												
DocTitle	A	255	Window title to display												
Locked	Logical		Is this document locked because it is already open?												

DocIndex Password: epsoneyeball

DocNumber
UserID
RecordType
Folder
Folder
UserID

EXHIBIT. CC.

